

**STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY**

MICHAEL A. COX, *EX REL*
PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

RHEA A. ZAGERMAN and
ZAGERMAN ENTERPRISE, INC.,
a Michigan Corporation, Jointly
and Severally,

Defendants.

MARK BLUMER (24029)
Attorney for Plaintiff
Assistant Attorney General
P.O. Box 30218
Lansing, Michigan 48909
(517) 241-6500

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Defendants
By: Richard E. Zuckerman (P26521)
Jennifer Zbytowski Belveal (P54740)

Case No. 03-1547-CZ

Hon. James R. Giddings

People's Ex
12/14/04
[Signature]

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement and Release ("Agreement") is entered into between the State of Michigan, acting through the Department of Attorney General's Health Care Fraud Division, (referred to as the "State"), Blue Cross Blue Shield of Michigan, Zagerman Enterprises and Rhea Zagerman, all collectively referred to as the "Parties."

II. PREAMBLE

As a preamble to this Agreement, the State alleges the following:

[Signature]

A. Zagerman Enterprises is a Michigan corporation, located at 100 N. Crooks Road, Suite 110A, Clawson, Michigan, and is a licensed Medicaid Program provider that has provided vision and related services to Medicaid patients/recipients during the period of January 1, 1998 through October 1, 2003.

B. From January 1998 through December 2001, (the period of the Covered Conduct), Zagerman Enterprises knowingly made false statements and/or misrepresentations of material facts to the Medicaid Program, submitted false claims or caused false claims to be submitted to the Medicaid Program, and accepted payment for false claims. In reliance on Zagerman Enterprises' fraud, false statements, misrepresentation of material facts, knowing concealment of material facts, and fraudulent claims, the State, through the Medicaid Program, paid the claims for Medicaid benefits submitted by or on behalf of Zagerman Enterprises.

C. Zagerman Enterprises took monies it wrongfully received from the Medicaid Program for its own use. Zagerman Enterprises did not repay, reimburse, or return to the Medicaid Program the moneys that it was not entitled to, or which exceeded the amount to which it was entitled to receive under the Medicaid Program.

D. [Intentionally Omitted]

E. The State contends that Zagerman Enterprises violated the Medicaid False Claims Act, MCL 400 601 *et seq.*

F. Zagerman Enterprises for itself as an entity only admits the matters alleged in Paragraphs B through E above, and further specifically acknowledges that it violated the Medicaid False Claims Act, MCL 400.601 *et seq.* Zagerman Enterprises further admits that it defrauded the Michigan Medicaid Program and that the resultant obligation for repayment is non-dischargeable in bankruptcy.

G. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties have reached a full and final settlement as set forth below. Execution of this Settlement Agreement and payment of moneys shall be construed as an admission of civil and criminal wrongdoing by Zagerman Enterprises only.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration, the Parties agree as follows:

A. Zagerman Enterprises agrees to pay to the State of Michigan \$160,000.00 (the "Settlement Amount") consisting of \$70,000.00, representing reimbursement to the Medicaid Program, and ⁵⁴~~\$44,000.00~~, ²⁶~~representing investigative and prosecution costs~~, and ³⁶~~\$46,000.00~~ as restitution to Blue Cross Blue Shield of Michigan, payable as follows:

1) Zagerman Enterprises shall deliver to the Department of Attorney General a certified check, cashier's check or money order payable to the State of Michigan in the amount of \$20,000.00 on November 1, 2004, and Zagerman Enterprises shall deliver to the Department of Attorney General a certified check, cashier's check, or money order payable to the State of Michigan as follows:

- (a) On the 15th of January, February and March of each of the years 2005-2010, the sum of \$750.00;
- (b) On the 15th of each of the remaining months of the years 2005-2010, the sum of \$1,250.00;
- (c) On the 15th day of November, 2006, the sum of \$10,000.00 as an additional payment towards the \$160,000;

(d) On the 15th day of November, 2008, the sum of \$10,000.00 as an additional payment towards the \$160,000;

(e) On the 15th day of November, 2010, the sum of \$39,000 as an additional and final payment towards the \$160,000;

(f) No interest shall accrue on the unpaid indebtedness.

B. Subject to the exceptions in Paragraph 5 below, the State and Blue Cross Blue Shield of Michigan (on behalf of their respective officers, agents, agencies and departments) agrees to release Zagerman Enterprises and its officers, directors, shareholders, employees, successors and assigns from any civil or administrative monetary claim the State has or may have under the Medicaid False Claims Act, MCL 400.601 *et seq.*, or the common law theories of breach of contract, unjust enrichment, or fraud or any other civil statute through common law theories, for the Covered Conduct and time period set forth in Paragraphs IIB and C of this Agreement.

C. Simultaneous with the execution of this Agreement, the Parties, through their counsel, shall execute a stipulation to entry of an order dismissing the pending action denominated "Mike Cox, *ex rel* People of the State of Michigan vs. Rhea Zagerman and Zagerman Enterprises" (Ingham County Circuit Court Case No. 03-1547-CZ), with prejudice and without costs or attorneys fees payable by or to any Party to that pending action other than what is specified herein.

D. The Parties agree that, if the payment of any check or down payment of the settlement amount is not honored at the time of presentment at the bank on which it is drawn, or is otherwise found to be unpayable, this Agreement may be null and void at the option of the State who may, as one of its options, reinstate the pending action specified in Paragraph IIID.

A handwritten signature in black ink, appearing to be 'RZ' or similar, located in the bottom right corner of the page.

E. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Zagerman Enterprises) are all of the following:

- 1) Any liability to the State (or its agencies) for any conduct other than the Covered Conduct as described in Paragraphs IIB and C of this Agreement;
- 2) Any criminal liability other than that arising directly or indirectly from the Covered Conduct described in Paragraphs IIB and C of this Agreement; and
- 3) Any administrative action, other than recovery of the above monies, by any State or Federal agency as a result of entering into this Agreement or the results of any other legal action.

F. Zagerman Enterprises fully releases the State, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) that Zagerman Enterprises asserted, could have asserted, or may assert in the future against the State, its agencies, employees, servants, and agents, related to the Covered Conduct as described in Paragraphs IIB and C of this Agreement and the State's investigation and prosecution thereof

G. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

H. Zagerman Enterprises expressly warrants that it has reviewed its financial situation and that it currently is solvent, and expressly warrants that it can satisfy the financial obligations under this Agreement.

I. [Intentionally Omitted]

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J. The effective date of the Agreement shall be when the final signatory signs the Agreement

K. In the event Rhea Zagerman or Zagerman Enterprises commences, or a third party commences, before the obligations under this Agreement are satisfied, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of Zagerman Enterprises' debts, or seeking to adjudicate Zagerman Enterprises as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Zagerman Enterprises, for all or any substantial part of Zagerman Enterprises, Zagerman Enterprises agrees as follows:

1) Rhea Zagerman agrees to personally pay any debt remaining as a result of the failure or inability of Zagerman Enterprises to make full payment under the terms of this Agreement;

2) Zagerman Enterprises' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. Section 547, and Zagerman Enterprises will not argue or otherwise take the position in any such case, proceeding or action that:

(a) Zagerman Enterprises' obligations under this Agreement may be avoided under 11 U.S.C. Section 547;

(b) Zagerman Enterprises was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State of Michigan hereunder; or

(c) The mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Zagerman Enterprises.

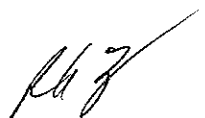
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3) In the event that Zagerman Enterprises' obligations under this Agreement are avoided for any reason, including, but not limited to, the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of Michigan, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against Zagerman Enterprises. If the State of Michigan chooses to do so, Zagerman Enterprises agrees that:

(a) Any such claims, actions or proceedings brought by the State (including any proceedings to exclude Zagerman Enterprises from participation in the Medicaid Program) are not subject to an "automatic stay" pursuant to 11 U.S.C. Section 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph, and that Zagerman Enterprises will not argue or otherwise contend that the State's claims, actions or proceedings are subject to an automatic stay;

(b) Zagerman Enterprises will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the State of Michigan within ten calendar days of written notification to Zagerman Enterprises, that the releases under this Agreement have been rescinded pursuant to this paragraph; and

4) Zagerman Enterprises acknowledges its agreement in this paragraph as provided in exchange for valuable consideration provided in this Agreement.


A handwritten signature in black ink, appearing to be "R. H. Z.", is located in the bottom right corner of the page.

L This Settlement Agreement contains the full and complete agreement between the Parties and shall not be modified in any manner except by written instrument executed by the Parties.

M The undersigned individuals signing this Agreement on behalf of Zagerman Enterprises represent and warrant that they are authorized by Zagerman Enterprises to execute this Agreement. The undersigned State of Michigan signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

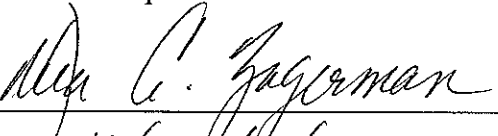
N Simultaneously with the execution of this Agreement, Zagerman Enterprises shall enter a plea of guilty in the case of The People v. Zagerman Enterprises, et al., Case No. 03-2492-FY pending in the 54-B Judicial District of the State of Michigan or such other court having jurisdiction to accept such a plea. The disposition of that case, as well as Case 03-2493-FY (also pending in the 54-B Judicial District of the State of Michigan), shall be governed by a separate Agreement.

State of Michigan Department of Attorney General

By: 
~~Donald L. Allen, Jr.~~ **MARK BLUMER**
Assistant Attorney General for the People
of the State of Michigan and Blue Cross
Blue Shield of Michigan

Date: 12/7/04

Zagerman Enterprises

By: 
Date: 10/20/04

A.

Rhea Zagerman

By: *Rhea Zagerman*

Date: *10/26/04*

Richard E. Zuckerman

Richard E. Zuckerman (P26521)
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[As to form only and not as a party]

Date: *11/17/04*

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